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MAILED

AUG 16 2010

OFFICE OF PETITIONS

In re Application of	:	
Kaplan et al.	:	
Application No. 10/524,547	:	DECISION ON PETITION
Filed: October 26, 2005	:	
Attorney Docket No. 1658-8/AMK	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 6, 2010, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to reply in a proper and timely manner to the final Office action mailed January 7, 2009. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, this application became abandoned on April 8, 2009. A Notice of Abandonment was mailed March 5, 2010.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of \$405.00 and the submission required by 37 CFR 1.114; (2) the petition fee of \$810.00; and (3) a proper statement of unintentional delay.

Further, petitioner contends that "The Applicants were of the belief that they were entitled to receive an advisory action before the expiry of the six month period after the final action ending on July 7, 2009."

However, **35 U.S.C. 133 Time for prosecuting application states:**

Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Director in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Director that such delay was unavoidable.

Further, § 1.135 Abandonment for failure to reply within time period states:

- (a) If an applicant of a patent application fails to reply within the time period provided under § 1.134 and § 1.136, the application will become abandoned unless an Office action indicates otherwise.
- (b) Prosecution of an application to save it from abandonment pursuant to paragraph (a) of this section must include such complete and proper reply as the condition of the application may require. **The admission of, or refusal to admit, any amendment after final rejection or any amendment not responsive to the last action, or any related proceedings, will not operate to save the application from abandonment.**

Therefore, since the final rejection was mailed January 7, 2009 and no proper reply was received from applicant, the application became abandoned on April 8, 2009.

Additionally, the address given on the petition differs from the address of record. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-7751.

This matter is being referred to Technology Center 1654 for processing of the Request for Continued Examination under 37 CFR 1.114 and the Amendment filed with the instant petition.



Joan Olszewski
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Office of Petitions

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